

What are farmers' rights?

The notion of farmers' rights was developed primarily to secure recognition of the farmers' role in the conservation and continuing development of local plant varieties and to protect their rights to these varieties and to save, sell and exchange seeds from their harvest (farmers' privilege). They are legally recognised in a number of international legal instruments and are the subject of specific legislation in a growing number of countries, especially those with large farming communities such as Bangladesh and India.

Originally conceived in the 1980's as a means to minimise the impact of plant breeder's rights on local farmers, farmers' rights are enshrined in a variety of legal instruments regulating access to and use of genetic resources and traditional knowledge. The term farmers' rights has been primarily linked with international regulation of plant genetic resources for food and agriculture.

Recognition of the rights of farmers not only to their local seed varieties but also to their lands, resources, traditional knowledge and self-determination may be found in International human rights and environmental treaties, national constitutions and laws as well as in the customary laws and practices of Indigenous peoples and local communities.

Legal recognition of farmers' rights

The first legal recognition of farmers' rights was in the International Undertaking of Plant Genetic Resources. FAO Conference Resolution 5/89 to the International Undertaking defined farmers' rights as "rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centres of origin/diversity".

The Preamble to the International Treaty on Plant Genetic Resources for Food and Agriculture (International Treaty) describes the "rights to save, use, exchange and sell farm-saved seed, and other propagating material" as fundamental for the realisation of farmers' rights.

Scope of farmers' rights

The International Treaty recognises the enormous contribution that the local and Indigenous communities and farmers of all regions of the world, particularly those in centres of origin and of crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agricultural production throughout the world.

Under the International Treaty, the responsibility for realising Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. Article 9 of the International Treaty entitled "Farmers' Rights" sets out the Contracting Parties obligations to take

measures to protect and promote these rights, including measures to secure:

- the protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- farmers' rights to equitably participate in sharing benefits from the utilisation of plant genetic resources for food and agriculture; and
- their right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.

The International Treaty specifically states that it is not to be interpreted as limiting any rights that farmers have to save, use, exchange and sell farm-saved seed and propagating material. The exercise of rights to use farm-saved seed depends, however, on national legislation and the International Treaty gives States complete freedom to decide whether or not to recognise a farmers' privilege.

Legislation specifically addressing farmers' rights has been adopted at the regional level by the African Union and the Association of Southeast Asian Nations (ASEAN), while national legislation has been adopted by Costa Rica, Ethiopia, Bangladesh, India, Malaysia, Nepal, Pakistan, Philippines and Thailand. The protection of farmers' varieties and centres of diversity through protection of agrobiodiversity zones is being promoted in draft Peruvian legislation.

Farmers' rights include both rights to share in economic benefits and rights to State support for farmers' traditional knowledge and farming

practices necessary for the conservation and sustainable use of their plant genetic resources.

Under the International Treaty, Contracting Parties are required to:

- promote the collection of plant genetic resources for food and agriculture and relevant associated information on those plant genetic resources that are under threat or are of potential use;
- promote or support, as appropriate, farmers and local communities' efforts to manage and conserve on-farm their plant genetic resources for food and agriculture; and
- promote in situ conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, inter alia, the efforts of Indigenous and local communities.

The rights of farmers over their traditional knowledge and traditional farming practices, as well as over their traditional lands and resources, are found in a variety of national, regional and international laws and policies. These include: the United Nations Declaration on the Rights of Indigenous Peoples; the Convention on Biological Diversity (CBD); and the Nagoya Protocol on Access to Genetic Resources and Sharing of Benefits Arising from their Utilization to the CBD.

The CBD and Nagoya Protocol exclude from their remit a small range of plant varieties, which fall within Annex 1 of the International Treaty, to the extent that these are utilised for research, breeding and training for food and agriculture. All other uses require prior informed consent of relevant farmers' groups.

Responsibility of users of farmers' varieties of seed

Responsibility for ensuring the existence of prior informed consent for access to and use of farmers' varieties lies with the user. All those involved in the collection, documentation, storage and transfer of farmers' varieties of seed and associated traditional knowledge are obliged to ensure that it has been obtained in accordance with the International Treaty (for varieties falling within Annex 1 of the Treaty) for uses falling exclusively within the coverage of the Treaty. In all other cases, users will need to secure prior informed

consent and enter into mutually agreed terms for collection and use of farmers' varieties and traditional knowledge as required by international law including the CBD and Nagoya Protocol and by national and regional law. (See Fact Sheet Int-7.)

Farmers' rights and national seed laws

One of the major impediments to the continuing development and use of farmers' local varieties has been the imposition of national seed laws which protect and promote the sale of certified seed, usually from commercial companies, at the expense of local varieties. This practice is now widely seen as inimical to the protection of agrobiodiversity. As a result, national seed laws are increasingly providing for the certification of local varieties and recognition of their role in securing local livelihoods and development opportunities and protection of biological diversity.

Farmers' rights and plant breeder's rights

Plant breeder's rights are protected internationally by the International Convention of the Union for the Protection of New Varieties of Plants (UPOV) 1961. UPOV 1978 recognised a 'farmer's privilege' allowing farmers to reuse propagating material from the previous year's harvest. Under UPOV 1991 the farmers' privilege is no longer automatic and all unlicensed multiplication of protected seed and propagating material is an infringement. UPOV 1991 provides a limited right to States to permit farmers to use farm saved seed for sowing on their own lands, but not for sale or exchange with others.

Participatory plant breeding programs

Farmers' rights may be enhanced by participatory plant breeding programs involving local farmers and agricultural scientists play an important role in developing new plant varieties and protecting farmers' rights over their resources and developing or adding value to local plant varieties.

Further information is available on the Farmers' rights website at <http://www.farmersrights.org> and at the official International Treaty website at <http://www.planttreaty.org>.

This fact sheet was produced as part of a collaboration between the CGIAR Consortium and the Australian Centre for Intellectual Property in Agriculture (ACIPA) to research international intellectual property issues relating to agriculture.

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